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AMENDED IN SENATE JANUARY 23, 2006  
AMENDED IN SENATE JANUARY 17, 2006  
AMENDED IN SENATE JANUARY 4, 2006  
AMENDED IN SENATE MAY 4, 2005  
AMENDED IN SENATE APRIL 13, 2005

**SENATE BILL**

**No. 362**

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**Introduced by Senator Torlakson**

February 17, 2005

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An act to amend Sections ~~51222~~ 33352, 51222, and 51241 of, and to add Article 3.5 (commencing with Section 33355) to Chapter 3 of Part 20 of, and to add Article 9.5 (commencing with Section 44620) to Chapter 3 of Part 25 ~~to of~~, the Education Code, relating to physical education, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Torlakson. Physical education.

*(1) Existing law requires the State Department of Education to exercise general supervision over the physical education courses in elementary and secondary schools of the state. Existing law requires the department to ensure that the data collected through Categorical Program Monitoring (CPM) indicates the actual number of minutes of instruction in physical education actually provided by each school district for the purpose of determining whether each school district is in compliance with the required minimum minutes of instruction*

*described in (1) above. Existing law repeals those provisions on January 1, 2007.*

*Existing law requires public schools to provide instruction in physical education for a total period of time of not less than 200 minutes each 10 schooldays to pupils in grades 1 to 6, inclusive. Existing law requires public schools to provide instruction in physical education for a total period of time of not less than 400 minutes each 10 schooldays to pupils in grades 7 to 12, inclusive.*

*This bill would require the department to ensure that the data collected through CPM indicates the extent to which each school within the jurisdiction of a school district or county office of education performs specified duties regarding the provision of instruction in physical education, including, among others, providing the required minimum minutes of instruction and conducting physical fitness testing, as specified. The bill would require the department to annually submit a report to the Governor and the Legislature that summarizes the data collected through CPM regarding those items and to annually post a summary of that data on the Internet Web site of the department. The bill would delete the existing repeal date and extend the supervisory authority of the department over physical education courses indefinitely.*

*(2) Existing law establishes various incentive grant programs to provide funds to applicant local educational agencies to encourages those agencies to engage in various educational programs and activities.*

*This bill would establish the Physical Education Incentive Grants Program, to be administered by the Superintendent of Public Instruction. The bill would require the Superintendent to apportion funding to eligible local educational agencies, as specified, for purposes of hiring teachers with clear single subject credentials in physical education. The bill would require the Superintendent to require the recipient local educational agency to provide a percentage match of its own funds for purposes of the program based on the amount of funds apportioned and the financial means of the local educational agency. The bill would require a representative of the applicant local educational agency to certify that an annual fiscal audit will be conducted and that adequate, accurate records will be kept and to provide the Superintendent with the assurance that grant funds received pursuant to the program will be expended only for the purposes for which they are granted. The bill would require the*

*Superintendent to require grant recipients to submit annual budget reports, and would authorize the Superintendent to withhold funds in subsequent years if grant funds are expended for purposes other than as awarded. The bill would provide that implementation of this program is contingent upon the appropriation of funds for its purposes in the annual Budget Act or other legislation.*

*(1)-(3) Existing law establishes various professional development and training programs for certificated employees of local educational agencies.*

*This bill would establish the Physical Education Professional Development Program, to be administered by the Superintendent of Public Instruction with the approval of the State Board of Education. Under the program, a school district that maintains kindergarten or any of grades 1 to 8, inclusive, would be eligible to apply for, and to receive, and the Superintendent would be authorized to allocate, a maximum of \$2,500, and a minimum of \$2,000, of incentive funding, upon the submission of a proposal, as specified, to provide training in physical education to no more than one teacher at the school district, through professional development programs conducted by institutions of higher education or by a provider of training approved by the department. The bill would appropriate \$2,500,000 for these purposes, with \$1,250,000 of that amount available for expenditure in the 2006-07 fiscal year, and the other \$1,250,000 available for expenditure in the 2007-08 fiscal year. The bill would require the Superintendent, subject to approval by the State Board of Education of a program proposal, as specified, to award incentive funding to applicant local educational agencies to provide teachers who provide instruction in physical education and school administrators with professional development regarding the provision of instruction in physical education, as specified. The bill would require each applicant local educational agency to submit to the state board a program proposal, as specified, and would require the state board to review and either approve or disapprove those proposals. The bill would require the state board, by June 30, 2007, to begin developing rigorous criteria for the approval of those proposals. The bill would require the Superintendent to require each local educational agency that is selected to receive funds to have an annual program audit conducted regarding the use of the funds for purposes of the program. The bill would authorize the Superintendent to withhold funds from a local educational agency based on the results of the audit and would*

*require the state board to establish a procedure and criteria for an agency or charter school to appeal an adverse audit finding to the state board, as specified. The bill would require the State Department of Education, subject to review and approval by the state board, to develop and submit to the Legislature an interim report by July 1, 2008, and a final report by February 1, 2012, that details various items regarding the operation and effectiveness of the program, as specified. The bill would provide that implementation of the program is contingent upon the appropriation of funds for its purposes in the annual Budget Act or other legislation.*

~~Existing law requires a pupil in grades 7 to 12, inclusive, to attend physical education courses for no less than 400 minutes each 10 schooldays.~~

*(4) Existing law requires public schools to provide instruction in physical education to pupils in grades 7 to 12, inclusive, as specified.*

This bill would define a physical education class as one in which each pupil is required to actively participate.

*(5) Existing law permits a pupil in grade 10, 11, or 12 to be excused from physical education classes, as provided, in order to participate in automobile driver training.*

This bill would delete those provisions.

*(6) Existing law, until June 30, 2007, authorizes the governing board of a school district and the office of the county superintendent of schools to grant a permanent exemption from courses in physical education if the pupil complies with one of several criteria, including, among others, that the pupil is 16 years of age or older and has been enrolled in grade 10 for one academic year or longer.*

*This bill would extend the operation of that authority to June 30, 2009. The bill would delete that the authority to grant an exemption with respect to a pupil who is 16 years of age or older and has been enrolled in grade 10 for one academic year or longer, and. The bill would also make conforming changes.*

*(7) Existing law, beginning on July 1, 2007, authorizes the governing board of a school district or the office of the county superintendent of schools to grant an exemption from courses in physical education for 2 years, any time during grades 10 to 12, inclusive, to a pupil who passes a physical performance test, as specified.*

*This bill would instead make that authority operative on July 1, 2009. The bill would require a the governing board of a school district*

to allow a pupil who fails the physical performance test to retake it annually upon the request of the pupil, and would declare ~~it is the Legislature's intent~~ *intent of the Legislature* that a pupil that fails the test be enrolled in a physical education course designed to lead to ~~that pupil's~~ *the passage by that pupil* of the test. By requiring school districts to perform additional duties, the bill would impose a state-mandated local program.

(2)-(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: ~~yes~~*no*. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A lack of adequate physical activity and appropriate
- 4 nutrition has greatly contributed to the epidemic levels of obesity
- 5 found in California.
- 6 (b) Obesity is a key risk factor associated with a number of
- 7 health problems including heart disease, diabetes, some cancers,
- 8 hypertension, gallbladder disease, musculoskeletal disorders, and
- 9 mental health.
- 10 (c) According to the State Department of Health Services, the
- 11 costs of obesity in California are estimated to equal more than
- 12 \$21.7 billion in health care costs, workers' compensation costs,
- 13 and lost productivity.
- 14 (d) According to the State Department of Education, healthy,
- 15 active, and well nourished children are more likely to attend
- 16 school and are more prepared and motivated to learn.
- 17 (e) Healthy children are also more likely to grow up to be
- 18 healthy adults and are less likely to develop costly and harmful
- 19 health problems.

1 (f) California's youth have the potential to advance the  
2 generational change necessary for reversing and preventing the  
3 devastating consequences of such an epidemic.

4 (g) Physical education can provide necessary physical activity  
5 while motivating a child to maintain healthy eating habits and to  
6 engage in regular physical activity as an aspect of one's lifestyle.

7 ~~(h) The State Board of Education has recently adopted content~~  
8 ~~standards for physical education, and, to the extent resources are~~  
9 ~~available, it is the intent of the Legislature to provide physical~~  
10 ~~education teachers with appropriate training that aligns with~~  
11 ~~these standards.~~

12 *SEC. 2. Section 33352 of the Education Code is amended to*  
13 *read:*

14 ~~33352. (a) The State Department of Education~~ *department*  
15 *shall exercise general supervision over the courses of physical*  
16 *education in elementary and secondary schools of the state;*  
17 *advise school officials, school boards, and teachers in the*  
18 *development and improvement of their physical education and*  
19 *activity programs; and investigate the work in physical education*  
20 *in the public schools.*

21 (b) ~~The department shall ensure that the data collected through~~  
22 ~~the Coordinated Compliance Review indicates the actual number~~  
23 ~~of minutes of instruction in physical education actually provided~~  
24 ~~by each school district, for the purpose of determining whether~~  
25 ~~each school district is in compliance with the physical education~~  
26 ~~requirements of Sections 51210, 51220, 51222, and 51223.~~  
27 *Categorical Program Monitoring indicates the extent to which*  
28 *each school within the jurisdiction of a school district or county*  
29 *office of education does all of the following that are applicable to*  
30 *the school:*

31 *(1) Provide instruction in physical education for a total period*  
32 *of time of not less than 200 minutes each 10 schooldays to pupils*  
33 *in grades 1 to 6, inclusive, pursuant to subdivision (g) of Section*  
34 *51210.*

35 *(2) Provide instruction in physical education for a total period*  
36 *of time of not less than 400 minutes each 10 schooldays to pupils*  
37 *in grades 7 to 12, inclusive, pursuant to subdivision (a) of*  
38 *Section 51222.*

39 *(3) Conduct physical fitness testing of pupils pursuant to*  
40 *Chapter 6 (commencing with Section 60800) of Part 33.*

1 (4) Include the results of physical fitness testing of pupils in  
2 the school accountability report card pursuant to subparagraph  
3 (C) of paragraph (1) of subdivision (b) of Section 33126.

4 (5) Offer elective courses in physical education to pupils in  
5 any of grades 9 to 12, inclusive.

6 (6) Offer instruction in physical education to pupils in any of  
7 grades 9 to 12, inclusive, that is conducive to health and vigor of  
8 body and mind for pupils and that requires each pupil to actively  
9 participate.

10 (7) Offer instruction in physical education to pupils that  
11 provides equal opportunities for participation regardless of  
12 gender.

13 (8) Require physical education teachers to hold appropriate  
14 teaching credentials issued by the Commission on Teacher  
15 Credentialing.

16 (c) The department annually shall do both of the following:

17 (1) Submit a report to the Governor and the Legislature that  
18 summarizes the data collected through Categorical Program  
19 Monitoring regarding the items described in paragraphs (1) to  
20 (8), inclusive, of subdivision (b).

21 (2) Post a summary of the data collected through Categorical  
22 Program Monitoring regarding the items described in  
23 paragraphs (1) to (8), inclusive, of subdivision (b) on the Internet  
24 Web site of the department.

25 ~~(e) This section shall remain in effect only until January 1,~~  
26 ~~2007, and as of that date is repealed, unless a later enacted~~  
27 ~~statute, that is enacted before January 1, 2007, deletes or extends~~  
28 ~~that date.~~

29 SEC. 3. Article 3.5 (commencing with Section 33355) is  
30 added to Chapter 3 of Part 20 of the Education Code, to read:

31  
32 Article 3.5. Physical Education Incentive Grants Program

33  
34 33355. (a) The Physical Education Incentive Grants  
35 Program is hereby established and shall be administered by the  
36 Superintendent.

37 (b) It is the intent of the Legislature in enacting this article to  
38 provide grants to local educational agencies such as school  
39 districts, county offices of education, and charter schools that  
40 maintain kindergarten or any of grades 1 to 8, inclusive, for

1 *purposes of enhancing the quality of instruction in physical*  
2 *education and to assist schools in this goal by providing*  
3 *incentive grants for the hiring of additional physical education*  
4 *specialists.*

5 *33356. (a) From funds appropriated in the annual Budget*  
6 *Act for purposes of this article, the Superintendent shall do all of*  
7 *the following:*

8 *(1) Apportion funding to eligible local educational agencies in*  
9 *an amount based on need and the size of the local educational*  
10 *agency.*

11 *(2) Assign priority for funding to local educational agencies*  
12 *based on need.*

13 *(3) Require the recipient local educational agency to provide*  
14 *a percentage match of its own funds for purposes of this article*  
15 *based on the amount of funds apportioned and the financial*  
16 *means of the local educational agency.*

17 *(b) Funds apportioned pursuant to this article shall be used*  
18 *for purposes of hiring teachers who hold clear single subject*  
19 *credentials in physical education.*

20 *(c) Funds apportioned pursuant to this article shall*  
21 *supplement and not supplant existing expenditures by the local*  
22 *educational agencies receiving grants.*

23 *(d) Local educational agencies that are selected to receive*  
24 *grants pursuant to this article are eligible to continue to receive*  
25 *grant awards on an ongoing basis in subsequent fiscal years to*  
26 *the extent that they continue to use the funds awarded according*  
27 *to subdivisions (b) and (c).*

28 *(e) To be eligible to receive a grant under this subdivision, a*  
29 *representative of the applicant local educational agency shall*  
30 *certify that an annual program audit will be conducted and that*  
31 *adequate, accurate records will be maintained. In addition, each*  
32 *applicant shall provide the Superintendent with the assurance*  
33 *that grant funds received pursuant to this article will be*  
34 *expended only for the purposes for which they are granted. The*  
35 *Superintendent shall require grant recipients to submit annual*  
36 *budget reports, and the Superintendent may withhold funds in*  
37 *subsequent years if grant funds are expended for purposes other*  
38 *than as awarded.*

1     (f) *The implementation of this article is contingent upon the*  
2 *appropriation of funds for its purposes in the annual Budget Act*  
3 *or other legislation.*

4     ~~SEC. 2.~~

5     SEC. 4. Article 9.5 (commencing with Section 44620) is  
6 added to Chapter 3 of Part 25 of the Education Code, to read:

7  
8             Article 9.5. The Physical Education Professional  
9             Development Program

10  
11     44620. (a) The Physical Education Professional  
12 Development Program is hereby established, and shall be  
13 administered by the Superintendent ~~with the approval of the State~~  
14 ~~Board of Education.~~

15     (b) It is the intent of the Legislature in enacting this article to  
16 provide professional development in physical education for ~~no~~  
17 *school administrators and for teachers who provide instruction*  
18 *in physical education.*

19     (c) *A local educational agency, including a charter school that*  
20 *provides instruction in kindergarten or any of grades 1 to 12,*  
21 *inclusive, is eligible to apply for funds appropriated for purposes*  
22 *of this article.*

23     44621. (a) *From funds appropriated for purposes of this*  
24 *article, the Superintendent, subject to approval by the state board*  
25 *of the program proposal pursuant to Section 44622, shall award*  
26 *incentive funding to applicant local educational agencies to*  
27 *provide teachers who provide instruction in physical education*  
28 *with professional development that includes, but is not limited to,*  
29 *development and enhancement of all of the following:*

30     (1) *Knowledge of physical education based on the model*  
31 *content standards in physical education adopted by the state*  
32 *board pursuant to Section 60605.2 and other state laws and*  
33 *regulations regarding the provision of instruction in physical*  
34 *education, including physical fitness standards adopted by the*  
35 *state board and physical fitness testing pursuant to Chapter 6*  
36 *(commencing with Section 60800) of Part 33.*

37     (2) *Instructional and assessment strategies to improve pupil*  
38 *learning and the assessment of pupils in physical education.*

1     (3) *Communication and motivation techniques to motivate*  
2 *pupils to desire higher levels of physical activity and physical*  
3 *fitness.*

4     (4) *Risk and safety management skills related to the provision*  
5 *of instruction in physical education.*

6     (b) *From funds appropriated for purposes of this article, the*  
7 *Superintendent, subject to approval by the state board of the*  
8 *program proposal pursuant to Section 44622, shall award*  
9 *incentive funding to applicant local educational agencies to*  
10 *provide school administrators with professional development*  
11 *that includes, but is not limited to, development and enhancement*  
12 *of all of the following:*

13     (1) *Knowledge of state laws and regulations regarding the*  
14 *provision of instruction in physical education and physical*  
15 *fitness testing pursuant to Chapter 6 (commencing with Section*  
16 *60800) of Part 33.*

17     (2) *Knowledge of principles of teaching and learning in*  
18 *physical education.*

19     (3) *Knowledge and skills for observing instruction in physical*  
20 *education and for providing assessments to teachers.*

21     (4) *Knowledge and skills in assessment and evaluation of*  
22 *pupil learning, program development, and implementation of*  
23 *instruction in physical education.*

24     (5) *Knowledge of resources available for quality physical*  
25 *education instructional programs.*

26     (6) *Appreciation for the value of physical education as part of*  
27 *the complete educational experience of a pupil.*

28     (c) (1) *The Superintendent shall develop a procedure for*  
29 *assigning priority for funding to applicant local educational*  
30 *agencies and charter schools.*

31     (2) *Notwithstanding the procedure developed pursuant to*  
32 *paragraph (1), in any fiscal year in which funding is inadequate*  
33 *to award funds to all eligible local educational agencies, the*  
34 *Superintendent shall use all of the following criteria for purposes*  
35 *of assigning priority for funding:*

36     (A) *First, to local educational agencies with a high percentage*  
37 *of pupils that do not satisfy the physical fitness testing*  
38 *requirements pursuant to Chapter 6 (commencing with Section*  
39 *60800) of Part 33.*

1     (B) *Second, to local educational agencies with schools with*  
2 *high poverty levels, as determined by the percentage of pupils*  
3 *eligible for free or reduced price meals.*

4     (C) *Third, to local educational agencies with a high number of*  
5 *teachers providing instruction in physical education who are*  
6 *either new to the teaching profession or who do not hold clear*  
7 *credentials.*

8     (d) *The implementation of this article is contingent upon the*  
9 *appropriation of funds for its purposes in the annual Budget Act*  
10 *or other statute.*

11     44622. (a) *To receive incentive funding pursuant to this*  
12 *article, a local educational agency shall submit a program*  
13 *proposal to the state board. The program proposal shall contain*  
14 *an expenditure plan and shall specify the manner in which the*  
15 *proposed professional development program for which funding is*  
16 *being requested addresses each of the elements described in*  
17 *paragraphs (1) to (4), inclusive of subdivision (a) of, and*  
18 *paragraphs (1) to (6), inclusive, of subdivision (b) of, Section*  
19 *44621.*

20     (b) *The state board shall review and either approve or*  
21 *disapprove the plan of each applicant local educational agency*  
22 *submitted pursuant to subdivision (a).*

23     (c) *Professional development programs offered pursuant to*  
24 *this article shall be for a period of time of no less than 20 hours*  
25 *of initial training and shall involve a minimum of 20 hours of*  
26 *additional, intensive and individualized professional*  
27 *development and support for a combined total of 40 hours of*  
28 *professional development in accordance with subdivisions (a)*  
29 *and (b) of Section 44621. The additional 20 hours of professional*  
30 *development and support may be completed over a period of up*  
31 *to two years once the initial 20 hours of professional*  
32 *development commences. To the extent practicable, the*  
33 *professional development shall be held conducted of the regular*  
34 *school day.*

35     44623. (a) *By June 30, 2007, the state board shall begin*  
36 *developing rigorous criteria for the approval of professional*  
37 *development providers to provide professional development*  
38 *pursuant to this article. The state board shall develop the criteria*  
39 *in consultation with individuals or groups with expertise in the*  
40 *elements described in paragraphs (1) to (4), inclusive of*

1 subdivision (a) of, and paragraphs (1) to (6), inclusive, of  
2 subdivision (b) of, Section 44621.

3 (b) The state board shall approve only providers that use  
4 curriculum and materials that are consistent with the most recent  
5 model content standards in physical education adopted by the  
6 state board pursuant to Section 60605.2 and with the most recent  
7 curriculum frameworks in physical education for kindergarten  
8 and grades 1 to 12, inclusive, adopted by the state board.

9 (c) A local educational agency or charter school that receives  
10 funding pursuant to this article shall only use a provider  
11 approved by the state board pursuant to subdivisions (a) and (b)  
12 to provide professional development pursuant to Section 44621.

13 (d) The Commission on Teacher Credentialing may approve a  
14 program developed pursuant to this article as meeting a portion  
15 of the requirements to fulfill the continuing education required  
16 for the renewal of a credential pursuant to Section 44277.

17 44624. (a) Incentive funding for purposes of this article may  
18 not exceed two thousand five hundred dollars (\$2500) per  
19 teacher for the first 20 hours of professional development and an  
20 additional two thousand five hundred dollars (\$2500) at the  
21 completion of the 20 hours of additional professional  
22 development and support.

23 (b) The Superintendent shall require each local educational  
24 agency that is selected to receive funds pursuant to this article to  
25 have an annual program audit conducted regarding the use of  
26 the funds for purposes of providing professional development in  
27 accordance with this article by the recipient local educational  
28 agency.

29 (c) If it is determined pursuant to a program audit that a  
30 participating local educational agency failed to provide  
31 professional development pursuant to this article to all school  
32 administrators and teachers for whom it received funding, the  
33 Superintendent shall withhold two thousand five hundred dollars  
34 (\$2500) from the next monthly principal apportionment of the  
35 local educational agency for each administrator or teacher who  
36 did not receive professional development.

37 (d) The state board shall establish a procedure and criteria for  
38 local education agencies to appeal to the state board an audit  
39 finding as described in subdivision (b). The state board may

1 *reduce or eliminate the amount to be withheld pursuant to*  
2 *subdivision (b).*

3 *44625. (a) By July 1, 2008, the department, subject to review*  
4 *and approval by the state board, shall develop and submit to the*  
5 *Legislature an interim report regarding the program established*  
6 *pursuant to this article. The interim report shall, at a minimum,*  
7 *detail all of the following:*

8 *(1) The number of teachers and school administrators who*  
9 *received professional development pursuant to this article.*

10 *(2) The entities that received funds for the purpose of offering*  
11 *training pursuant to this article and the number of teachers and*  
12 *school administrators to whom the entities have provided*  
13 *professional development.*

14 *(3) Information detailing the effectiveness of the program*  
15 *established pursuant to this article. This information, at a*  
16 *minimum, shall incorporate survey data concerning program*  
17 *effectiveness that has been gathered from program participants.*

18 *(4) Information detailing the retention rate of school*  
19 *administrators who participated in professional development*  
20 *offered pursuant to this article.*

21 *(b) By February 1, 2012, the department, subject to review*  
22 *and approval by the state board, shall develop and submit to the*  
23 *Legislature a final report regarding the program established*  
24 *pursuant to this article. The final report shall, at a minimum,*  
25 *detail the items described in paragraphs (1) to (4), inclusive, of*  
26 *subdivision (a). ~~more than one teacher at each local educational~~*  
27 *agency that maintains kindergarten or any of grades 1 to 8,*  
28 *inclusive.*

29 *~~(c) This program is intended to serve teachers employed in~~*  
30 *~~public schools for the purpose of teaching physical education to~~*  
31 *~~pupils in kindergarten or any of grades 1 to 8, inclusive.~~*

32 *~~44621. As a condition of receipt of funds under the program,~~*  
33 *~~a local educational agency shall submit to the State Board of~~*  
34 *~~Education a certified assurance, signed by the appropriate local~~*  
35 *~~educational agency official and approved by the governing body~~*  
36 *~~of the agency, that contains its proposal that clearly demonstrates~~*  
37 *~~that the local educational agency's training curriculum was~~*  
38 *~~approved by the state board or that the local educational agency~~*  
39 *~~contracted with a provider whose training curriculum was~~*  
40 *~~approved by the state board.~~*

~~44622. The State Board of Education shall only approve training curriculum that is consistent with state-adopted physical education model content standards and with physical education curriculum frameworks for kindergarten and grades 1 to 8, inclusive, that are adopted by the state board.~~

~~44623. A local educational agency may receive a maximum of two thousand five hundred dollars (\$2,500), and a minimum of two thousand dollars (\$2,000), for the training of the teacher who receives professional development on physical education under the program.~~

~~44624. The sum of two million five hundred thousand dollars (\$2,500,000) is hereby appropriated from the General Fund to the department for purposes of the program. Of the amount appropriated, the sum of one million two hundred fifty thousand dollars (\$1,250,000) is available for expenditure in the 2006-07 fiscal year, and the sum of one million two hundred fifty thousand dollars (\$1,250,000) is available for expenditure in the 2007-08 fiscal year.~~

~~44625. The State Board shall authorize the Superintendent to prepare, and the state board shall adopt, regulations for the implementation and monitoring of the program.~~

~~SEC. 3.~~

~~SEC. 5. Section 51222 of the Education Code is amended to read:~~

~~51222. (a) A pupil, except a pupil excused or exempted pursuant to Section 51241, shall be required to attend a physical education class for a total period of time of not less than 400 minutes each 10 schooldays. A physical education class is one in which each pupil is required to actively participate.~~

~~(b) The governing board of a school district that maintains a high school and that elects to exempt a pupil from required attendance in physical education classes pursuant to subdivision (b) of Section 51241 shall offer that pupil a variety of elective physical education classes of not less than 400 minutes each 10 schooldays.~~

~~SEC. 4.~~

~~SEC. 6. Section 51241 of the Education Code, as amended by Section 2 of Chapter 459 of the Statutes of 2003, is amended to read:~~

1 51241. (a) The governing board of a school district or the  
2 office of the county superintendent of schools of a county may  
3 grant temporary exemption to a pupil from courses in physical  
4 education, if the pupil is either of the following:

5 (1) Ill or injured and a modified program to meet the needs of  
6 the pupil cannot be provided.

7 (2) Enrolled for one-half, or less, of the ~~course work~~  
8 *coursework* normally required of full-time pupils.

9 (b) The governing board of a school district or the office of the  
10 county superintendent of schools may, with the consent of a  
11 pupil, grant the pupil exemption from courses in physical  
12 education for two years any time during grades 10 to 12,  
13 inclusive.

14 (c) The governing board of a school district or the office of the  
15 county superintendent of schools may grant permanent  
16 exemption from courses in physical education if the pupil  
17 complies with any one of the following:

18 (1) Is enrolled as a postgraduate pupil.

19 (2) Is enrolled in a juvenile home, ranch, camp, or forestry  
20 camp school where pupils are scheduled for recreation and  
21 exercise pursuant to the requirements of Section 4346 of Title 15  
22 of the California Code of Regulations.

23 (d) A pupil exempted under subdivision (b) may not be  
24 permitted to attend fewer total hours of courses and classes if he  
25 or she elects not to enroll in a physical education course than he  
26 or she would have attended if he or she had elected to enroll in a  
27 physical education course.

28 (e) Notwithstanding any other law, the governing board of a  
29 school district may administer to pupils in grades 10 to 12,  
30 inclusive, the physical performance test required in 9th grade  
31 pursuant to Section 60800.

32 (f) This section shall remain in effect only until June 30, ~~2007~~  
33 *2009*, and as of that date is repealed, unless a later enacted  
34 statute, that is enacted before June 30, ~~2007~~ *2009*, deletes or  
35 extends that date.

36 ~~SEC. 5.~~

37 *SEC. 7.* Section 51241 of the Education Code, as added by  
38 Section 3 of Chapter 459 of the Statutes of 2003, is amended to  
39 read:

1     51241. (a) The governing board of a school district or the  
2 office of the county superintendent of schools of a county may  
3 grant temporary exemption to a pupil from courses in physical  
4 education, if the pupil is either of the following:

5     (1) Ill or injured and a modified program to meet the needs of  
6 the pupil cannot be provided.

7     (2) Enrolled for one-half, or less, of the ~~work~~ *coursework*  
8 normally required of full-time pupils.

9     (b) (1) The governing board of a school district or the office  
10 of the county superintendent of schools may, with the consent of  
11 a pupil, if the pupil has passed the physical performance test  
12 administered in the 9th grade pursuant to Section 60800, grant  
13 the pupil exemption from courses in physical education for two  
14 years any time during grades 10 to 12, inclusive.

15     (2) Pursuant to Sections 51210, 51220, and 51222, physical  
16 education is required to be offered to all pupils, and schools are,  
17 therefore, required to provide adequate facilities and instructional  
18 resources for that instruction. In this regard, paragraph (1) shall  
19 be implemented in a manner that does not create a new program  
20 or impose a higher level of service on a local educational agency.  
21 Paragraph (1) does not mandate any overall increase in staffing  
22 or instructional time because, pursuant to subdivision (d), pupils  
23 are not permitted to attend fewer total hours of class if they do  
24 not enroll in physical education. Paragraph (1) does not mandate  
25 any new costs because any additional physical education  
26 instruction that a local educational agency provides may be  
27 accomplished during the existing instructional day, with existing  
28 facilities. Paragraph (1) does not prevent a local educational  
29 agency from implementing any other temporary or permanent  
30 exemption authorized by this section.

31     (c) The governing board of a school district or the office of the  
32 county superintendent of schools may grant permanent  
33 exemption from courses in physical education if the pupil  
34 complies with either of the following:

35     (1) Is enrolled as a postgraduate pupil.

36     (2) Is enrolled in a juvenile home, ranch, camp, or forestry  
37 camp school where pupils are scheduled for recreation and  
38 exercise pursuant to the requirements of Section 4346 of Title 15  
39 of the California Code of Regulations.

1 (d) A pupil exempted under paragraph (1) of subdivision (b)  
2 may not attend fewer total hours of courses and classes if he or  
3 she elects not to enroll in a physical education course than he or  
4 she would have attended if he or she had elected to enroll in a  
5 physical education course.

6 (e) Notwithstanding any other law, the governing board of a  
7 school district shall give a pupil in grades 10 to 12, inclusive,  
8 who fails to pass the physical performance test required in 9th  
9 grade pursuant to Section 60800 the opportunity, annually and  
10 upon the request of the pupil, to retake the test. A pupil who  
11 passes this physical performance test in any of grades 10 to 12,  
12 inclusive, is eligible for an exemption pursuant to subdivision  
13 (b).

14 (f) It is the intent of the Legislature that a pupil who fails to  
15 pass the physical performance test required by Section 60800 and  
16 who is otherwise required to enroll in a course of physical  
17 education shall be enrolled in a physical education course  
18 designed to lead to that pupil's passage of the physical  
19 performance test.

20 (g) This section shall become operative on July 1, ~~2007~~ 2009.

21 ~~SEC. 6.~~

22 *SEC. 8.* If the Commission on State Mandates determines that  
23 this act contains costs mandated by the state, reimbursement to  
24 local agencies and school districts for those costs shall be made  
25 pursuant to Part 7 (commencing with Section 17500) of Division  
26 4 of Title 2 of the Government Code.